



a union member and state and federal parolee,<sup>1</sup> asserts that Knorr and others plotted to revoke his parole after he refused to support an opposition candidate during a battle for control of a local union. The specific facts of plaintiff's complaint are set forth below.

Sometime before February 28, 1999, several individuals allegedly agreed to a scheme in which John Morris ("Morris"), the duly elected leader of Local Union 115 of the International Brotherhood of Teamsters ("Local 115"), would be ousted from certain union leadership positions. Compl. ¶¶ 19, 20. In order to accomplish this goal, these individuals struck a deal with James P. Hoffa ("Hoffa"), the president of the International Brotherhood of Teamsters ("IBT"). Under the arrangement, if Hoffa imposed an emergency trusteeship on Local 115, and thus enabled local union members and officers to oust Morris from his leadership positions, then Hoffa would be allowed to fill these vacancies with "his people." Id. at ¶ 20. Plaintiff, who had joined Local 115 as a condition of his parole, was informed of this arrangement on February 28, 1999. He was asked for his support, but he declined to provide it. Id. at ¶ 20, 31. Plaintiff's refusal to offer his support, however, did not thwart the plan. On November 15, 1999, Hoffa, as promised, imposed an emergency trusteeship on Local 115, effectively ousting Morris from his union positions. Id. ¶ 22.

One week after the change in leadership, union officers Sean Heim ("Heim"), Charles Argeros ("Argeros"), Paul Vanderwoude ("Vanderwoude") and Leo Reilly ("Reilly") went to Huff Paper Co., where plaintiff worked, and informed the present Local 115 members who supported Morris that if they did not cooperate with the new IBT leadership they would "not get any representation whatsoever." Id. at ¶ 23. At this time, Heim directly threatened the grandson of

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<sup>1</sup> Plaintiff served forty months in a federal prison and some time in a state prison for possession of marijuana with the intent to deliver. Compl. at ¶ 31.

Morris with bodily harm. Id. Two days later, plaintiff and six other Local 115 members filed a grievance at the Local 115 Union Hall based on the above statements and threats. Id. at ¶ 24.

In December 1999, the Honorable John R. Padova of this court granted a preliminary injunction sought by Morris with reference to the emergency trusteeship, which led to the holding of trusteeship hearings by the IBT from January through early March 2000. Id. at ¶ 26, 27. These hearings were held in order to meet the IBT's requirements for imposing an emergency trusteeship. Id. ¶ 27. During the pendency of these hearings, plaintiff and other Local 115 members, believing the trusteeship was imposed for inappropriate reasons and that the IBT hearings were "a kangaroo court," picketed outside the Local 115 Union Hall. Id. ¶¶ 28, 29.

On March 14, 2000, in response to the preceding events, plaintiff filed charges with the National Labor Relations Board ("NLRB"). Id. ¶ 30. One of the charges cited the threats that had been made to Morris' grandson. Id. The NLRB then scheduled a meeting with plaintiff for May 5, 2000. Id. The purpose of the meeting was for plaintiff to provide testimony and sign an affidavit in support of the charges. Id.

On May 3, 2000, plaintiff attended his regularly scheduled meeting with his federal probation officer, Magdelyn Baez ("Baez"). Id. at ¶ 32. At the meeting, Baez informed plaintiff that Norton Brainard ("Brainard"), the attorney for Local 115, sent her a videotape of him on the picket line and that Brainard claimed that this behavior was a violation of plaintiff's supervised release. Id. Although Baez did not believe that plaintiff had violated the terms of his federal supervised release by picketing, she did caution him to be careful about what he said and did on the picket line. Id. She also indicated to plaintiff that Brainard and Gerald McNamara ("McNamara"), an officer in Local 115, had been seeking his arrest for the past six months. Id. The next day, Knorr, plaintiff's state parole agent, left a citation at plaintiff's home directing him to appear at

Knorr's office on the following day, May 5, 2000, which also happened to be the day that plaintiff was scheduled to provide testimony at the NLRB meeting. Id. at ¶ 33.

When plaintiff arrived at Knorr's office on May 5, 2000, he was arrested and put in a holding cell. Id. at ¶ 34. Approximately ten minutes after being placed in the holding cell, Knorr arrived and said: "You don't have a clue why I'm arresting you. . . . Because you are a f----- goon and thug for Johnny Morris and you're a-- is going to jail and let's see him get you out of this." Id. at ¶ 35. While plaintiff was in the holding cell, Knorr conducted an allegedly illegal search of plaintiff's car. Id. at ¶ 36. During that search, three utility knives and a cell phone were found. Id. At 2:00 p.m., Knorr and four parole officers took plaintiff to his home where they conducted an allegedly illegal search of his house. Id. at ¶ 37. Nothing was found during the search of plaintiff's home. Id. Plaintiff was then sent to Graterford Prison, where he remained for one week while Knorr prepared the parole violation charges against him. Id. at ¶ 38.

Plaintiff was subsequently charged with four violations of his state parole. Id. Upon being informed of these charges, plaintiff requested a full parole panel hearing, which was granted and set for June 6, 2000. Id. at ¶ 39. Shortly before the hearing date, an additional charge was brought against plaintiff based on an allegation by William Oswald ("Oswald"), a member of Local 115, that he had been threatened and harassed by plaintiff at work. Id. At the June 6, 2000 parole hearing, Oswald provided allegedly false testimony consistent with his allegation of plaintiff's assaultive behavior. Id. at ¶ 40. Based on this testimony, the parole board revoked plaintiff's parole and incarcerated him for thirteen months, causing him to lose his job with Huff Paper Co. Id. at ¶¶ 4, 41.

Based on the aforementioned events, on December 31, 2001, plaintiff filed the instant complaint against Knorr and other defendants. Plaintiff alleges that Knorr and various other

defendants violated and conspired to violate his federal civil rights. Presently before the court is Knorr's motion to dismiss plaintiff's Section 1983 and 1985 claims pursuant to Rule 12(b)(6).

### STANDARD OF REVIEW

In ruling on a motion to dismiss<sup>2</sup> for failure to state a claim upon which relief may be granted, the court must accept as true all well-pleaded allegations of fact in the plaintiff's complaint, and any reasonable inferences that may be drawn therefrom, and must determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir.1996) (citations omitted). But a court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-30 (3d Cir.1997) (citations omitted). Claims should be dismissed under Rule 12(b)(6) only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). But a court need not credit a complaint's "bald

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<sup>2</sup> Plaintiff argues that the court must treat defendant Knorr's 12(b)(6) motion as a motion for summary judgment because he attaches the opinion of the Commonwealth Court of Pennsylvania. Pl.'s Mem. in Opp. to the Mot. to Dis. of Knorr 10 n.7. Ordinarily, where a defendant attaches extrinsic evidence to a Rule 12(b)(6) motion, the court must convert that motion into one for summary judgment under Rule 56 to give the plaintiff an opportunity to respond. Kauffman v. Moss, 420 F.2d 1270, 1274 (3d Cir. 1970). A court, however, may properly look at judicial proceedings, in addition to the allegations in the complaint to resolve a 12(b)(6) motion. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group Ltd., 181 F.3d 410, 426 (3d Cir. 1999) (stating that a court, "on a motion to dismiss, . . . may take judicial notice of another court's opinion -- not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity."). Because the Commonwealth Court of Pennsylvania's opinion can be judicially noticed, there is no need to convert Knorr's pending 12(b)(6) motion into one for summary judgment.

assertions" or "legal conclusions" when deciding a motion to dismiss. In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-30 (3d Cir.1997) (citations omitted).

## **DISCUSSION**

Plaintiff bring civil rights claims against Knorr under Sections 1983 and 1985. As set forth below, the court will grant the plaintiff leave to amend his Section 1983 claim and will dismiss plaintiff's Section 1985 claim.

### **I. Plaintiff's Section 1983 Claim (Count I)**

Section 1983 provides a federal cause of action against any person who, acting under color of state law, deprives another of his federal rights.<sup>3</sup> Count I of plaintiff's complaint alleges a deprivation of federal constitutional rights, in violation of Section 1983, against Knorr and the Commonwealth of Pennsylvania<sup>4</sup>. Knorr moves to dismiss plaintiff's Section 1983 claim pursuant to Rule 12(b)(6). He argues that plaintiff fails to adequately plead the elements of a Section 1983 claim.

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<sup>3</sup> 42 U.S.C. § 1983, in pertinent part, reads as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

<sup>4</sup> The court dismissed plaintiff's Section 1983 and 1985 claims against the Commonwealth of Pennsylvania pursuant to Rule 12(b)(6) in a separate memorandum and order.

Two allegations are required in order to state a cause of action under Section 1983. First, a plaintiff must allege that a person deprived him of a federally protected right. Second, a plaintiff must allege that the person who deprived him of the right acted under color of state law. Gomez v. Toledo, 446 U.S. 635, 640 (1980) (citations omitted). Knorr argues that plaintiff's complaint fails to make a prima facie showing of the first element. The court agrees.

Without expressly mentioning any constitutional or federal statutory right, plaintiff appears to allege that Knorr violated his federal rights by conducting an illegal seizure and two illegal searches. While one might assume plaintiff is alleging a deprivation of certain Fourth Amendment rights, he does not expressly say so in his complaint. In his complaint, plaintiff concludes that the "conduct alleged in said paragraphs [¶ 33-41] constitute[s] [a] deprivation of Mr. Breslin's federal civil rights." Compl. at § 44. In his response to Knorr's motion to dismiss, he indicates he intends to aver that Knorr violated his constitutional rights by:

(1) unlawfully arresting [plaintiff] without reasonable or probable cause and upon no proper charge, (2) unlawfully searching [plaintiff's] vehicle, including both the passenger compartment and the trunk, without reasonable or probable cause, and (3) unlawfully entering and searching [plaintiff's] home without reasonable or probable cause."

Pl.'s Memo. of Law in Opposition to Def. Knorr's Mot. to Dis. 7-8. But this is not the complaint and it does not identify specific federally protected rights. His failure to identify in his complaint the rights of which he has been deprived vitiates his Section 1983 claim. As such, plaintiff's Section 1983 claim will be dismissed without prejudice and with leave to amend.

Knorr raises five additional grounds upon which to dismiss plaintiff's Section 1983 claim: (1) claim preclusion; (2) issue preclusion; (3) Eleventh Amendment; (4) absolute immunity; and (5) qualified immunity. The court will address these claims as best it can given the inadequacy of the complaint.

## A. Claim Preclusion

Defendant Knorr argues that the doctrine of claim preclusion bars relitigation of plaintiff's Section 1983 claim. He asserts that the prior judgment by the Commonwealth Court of Pennsylvania, affirming the parole board's decision to revoke plaintiff's parole, conclusively decided this claim. In response, plaintiff argues that his pending Section 1983 claim was not before the state court when it reviewed his parole revocation proceeding, and thus cannot be subject to claim preclusion principles. Because the causes of action in the two suits are not the same, Knorr's motion to dismiss on claim preclusion grounds will be denied.

The goal of claim preclusion is to prevent a party from prevailing on a claim, in a later action, that he might have but did not assert in the first action. Gregory v. Chehi, 843 F.2d 111, 116 (3d Cir. 1988) (citations omitted). To achieve this goal, the Full Faith and Credit statute, 18 U.S.C. § 1738<sup>5</sup>, requires federal courts to give prior state court judgments and administrative decisions the same preclusive effect as would the courts of the states from which the judgments emerged. Allen v. McCurry, 449 U.S. 90, 97-98 (1980); Migra v. Warren City School District Board of Education, 465 U.S. 75, 83 (1984); Kremer v. Chemical Constr. Corp., 456 U.S. 461, 467 n.6 (1982); University of Tennessee v. Elliot, 478 U.S. 788, 797-978 (1986).

As a Pennsylvania court issued the initial judgment here, the court looks primarily to that

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<sup>5</sup> 28 U.S.C. § 1738 reads in pertinent part:

The . . . judicial proceedings of any court of any . . . State . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

state's law on claim preclusion to discover the extent to which the initial state proceeding, affirming the parole board's decision to revoke plaintiff's parole, would be given preclusive effect in a later state proceeding. Kremer, 456 U.S. at 482.<sup>6</sup> In Pennsylvania, the doctrine of claim preclusion applies when two actions share an identity of the (1) thing sued on; (2) cause of action; (3) persons and parties to the action; and (4) quality or capacity of the parties suing or sued. Gregory, 843 F.2d at 116 (citing Dusquesne Slag Products Co. v. Lench, 415 A.2d 53, 56 (1980)).

Applying this test, the court finds that plaintiff's pending Section 1983 claim is not precluded by the Commonwealth Court's affirmance of the parole board's revocation decision. A court will not preclude a subsequent action unless the moving party satisfies each of the four elements of claim preclusion. The court will deny defendant's motion to dismiss based on claim preclusion because he fails to satisfy the second element. The second element requires that the causes of action raised in the two suits be identical.

The court finds that the causes of action in the state action and the federal action are different for two reasons. First, the conduct at issue in the state action is distinct from the conduct at issue in the federal action. In the state action, plaintiff challenged the sufficiency of the evidence

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<sup>6</sup> In Kremer, the Court stated:

It has long been established that § 1738 does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken.

Id. at 482 (citing McElmoyle v. Cohen, 13 Pet. 312, 326 (1839) and Mills v. Duryee, 7 Cranch 481, 485 (1813)); see also Edmundson v. Borough of Kennett Square, 4 F.3d 186, 189 (3d Cir. 1993) ("When a prior case has been adjudicated in a state court, federal courts are required by 28 U.S.C. § 1738 to give full faith and credit to the state judgment, and in section 1983 cases, apply the same preclusion rules as would the courts of that state.") (citations omitted); Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 461 (3d Cir. 1996) (quoting Edmundson and then applying Pennsylvania's preclusion rules to decide the issue).

against him; thus, the acts at issue in that case were those of plaintiff. By contrast, in the federal action, plaintiff challenges the conduct of Knorr, as well as numerous private defendants; thus, the acts at issue in the instant action are those of Knorr and the other defendants - plaintiff's acts are not at issue here. Cf. Jones v. Holvey, 29 F.3d 828, 830 (3d Cir. 1994) (describing similar circumstances and explaining why second element in claim preclusion is not satisfied). Second, the Commonwealth Court conducted only a limited review of plaintiff's challenge to the revocation of his parole and did not address plaintiff's constitutional claims. Its written opinion is limited to the question of whether the parole board based its decision to revoke plaintiff's parole on sufficient evidence. The state court did not, in its written opinion, address or even mention plaintiff's constitutional claims. Nor did it analyze or discuss the constitutionality of Knorr's actions.

The court finds claim preclusion inappropriate here for one additional reason. Our Circuit has advised that "[r]easonable doubt as to what was decided by a prior judgment should be resolved against using it as an estoppel." Kauffman v. Moss, 420 F.2d 1270, 1274 (3d Cir. 1970). On the facts presented in the pleadings, the court is unable to determine if plaintiff's federal civil rights claim should have been raised and fully litigated in the state court. No record of the state court proceeding has been presented to this court. Nor has either party indicated that the constitutional issues were briefed in the state court proceeding. The only evidence presented is a copy of the state court's opinion, and that opinion does not discuss or even mention plaintiff's constitutional claims. Lacking such evidence, I am uninformed as to what the state court did and did not resolve with regard to his constitutional claims. Cf. Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 461 (3d Cir. 1996) (declining to apply preclusion doctrine because court was unable to determine if the federal civil rights claim should have been raised or if it was raised and fully litigated in the prior suit); Kauffman, 420 F.2d at 1274 (indicating that the lack of a trial

record or transcript precludes a court from identifying the claims and issues decided in the prior proceeding); Basista v. Weir, 340 F.2d 74, 81-82 (3d Cir. 1965) (declining to apply preclusion doctrine because of lack of record as to what was resolved in prior proceeding). Given the sparsity of the record before the court, I will follow the advice of our Court of Appeals and decline to apply preclusion principles to this case. As such, Knorr's motion to dismiss on claim preclusion grounds is denied.

## **B. Issue Preclusion**

Defendant Knorr's issue preclusion argument mirrors his claim preclusion argument. He asserts that the prior judgment by the state court, affirming the parole board's decision to revoke plaintiff's parole, conclusively decided the issue of the constitutionality of Knorr's conduct. In response, plaintiff argues that the issue of Knorr's violation of plaintiff's civil rights was not before the state court when it reviewed his parole revocation proceeding, and thus cannot be subject to issue preclusion principles.

Issue preclusion forecloses relitigation of a matter actually litigated and essential to the prior decision. Gregory, 843 F.2d at 116. Under Pennsylvania law, a court will only invoke issue preclusion if the following conditions exist: (1) the issue decided in the prior adjudication was identical with the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in the prior action. Id. at 121 (citing Safeguard Mut. Ins. Co. v. Williams, 345 A.2d 664, 668 (1975)).

Lacking a record of the state court proceeding, Knorr fails to show that the actions were

identical or that plaintiff had an opportunity to actually litigate the issue of the constitutionality of Knorr's conduct. As such, Knorr's motion to dismiss on issue preclusion grounds is denied.

### **C. Eleventh Amendment**

Defendant Knorr next argues that plaintiff's claims against him are barred by the Eleventh Amendment. The Eleventh Amendment<sup>7</sup> bars civil damages against a state in federal court absent waiver by the state or valid congressional override. Kentucky v. Graham, 473 U.S. 159, 169 (1985). Pennsylvania has specifically withheld such consent by statute. 42 PA.C.S. § 8521 (1998).<sup>8</sup> Regardless of a state's consent, the Eleventh Amendment does not bar suits for monetary damages against state officials acting in their individual or personal capacities. Laskaris v. Thornburgh, 661 F.2d 23, 26 (3d Cir. 1981). Because the party asserting Eleventh Amendment immunity bears the burden of proving its applicability, Chisolm v. McManimon, 275 F.3d 315, 323 (3d Cir. 2001) (citing Christy v. Pennsylvania Turnpike Commission, 54 F.3d 1140, 114 (3d Cir. 1995)), Knorr must prove that the Eleventh Amendment bars plaintiff's suit against him.

The court, however, is unable to address this argument without knowing whether plaintiff is suing Knorr in his official or personal capacity. If plaintiff is suing Knorr in his personal

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<sup>7</sup> The Eleventh Amendment reads as follows:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

<sup>8</sup> 4 PA.C.S. § 8521, reads as follows:

Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

capacity, his claim will be permitted to continue. See Hafer v. Melo, 502 U.S. 21, 30-31 (1991) (stating that the Eleventh Amendment “does not erect a barrier against suits to impose ‘individual and personal liability’ on state officials under Section 1983) (citing Scheuer v. Rhodes, 416 U.S. 232, 238 (1974)). If, however, plaintiff is suing defendant in his official capacity, then his suit will be barred. See Hafer, 502 U.S. at 25 (noting that suits against state officials in their official capacity should be treated as suits against the states).

Despite the importance of this distinction, plaintiff does not expressly indicate in what capacity he is suing Knorr. The complaint offers no guidance on this issue, and while one of plaintiff’s responsive pleadings indicates that he is suing Knorr in his personal capacity, this is not a sufficient basis upon which to decide the issue of the applicability of the Eleventh Amendment. See Pl.’s Mem. in Opp. to Defs. Knorr and Commonwealth’s Mot. to Dis. 15 (indirectly suggesting that plaintiff is suing Knorr in his personal capacity). Given the court’s inability to decide this motion on the present allegations, the plaintiff’s Section 1983 claim is dismissed without prejudice to amend for this reason as well.

#### **D. Absolute Immunity**

Defendant Knorr argues he is entitled to absolute immunity because of his status as a probation officer. The Third Circuit has held that a probation officer acting in a judicial capacity is entitled to absolute immunity. Wilson v. Rackmill, 878 F.2d 772, 775 (3d Cir. 1989); Harper v. Jeffries, 808 F.2d 281, 284 (3d Cir. 1986); Thompson v. Burke, 556 F.2d 231, 236-238 (3d Cir. 1977)). In contrast, a probation officer acting in an administrative, executive or ministerial capacity is entitled only to qualified immunity. Wilson, 878 F.2d at 775-776; Harper, 808 F.2d at

284; Thompson, 556 F.2d at 237-238.<sup>9</sup> The key consideration, then, in determining whether defendant Knorr, as a probation officer, is absolutely immune from plaintiff's suit is whether or not his actions occurred when he was acting in a judicial or executive capacity.

Knorr's specific acts in this controversy appear more executive than judicial in nature. He left a citation at plaintiff's home. Compl. ¶ 33. He investigated allegations of parole violations by plaintiff and reviewed evidence of such violations. Def. Knorr's Mot. to Dis. 17. He arrested plaintiff and thus, presumably typed up a warrant application for plaintiff's arrest. Compl. ¶ 34. He conducted searches of plaintiff's car and home after the arrest. Compl. ¶ 36-37. The Third Circuit, in several previous cases, characterizes such activities as executive, and not judicial, in nature. See Wilson, 878 F.2d at 776 (indicating that investigating allegations of parole violations, typing up an arrest warrant application and signing an arrest warrant constituted executive acts); Harper, 808 F.2d at 284 (finding that charging parolee with wrongdoing and informing parole board of such wrongdoing constituted executive acts).<sup>10</sup> Given these precedents, I find that Knorr

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<sup>9</sup> In the absence of a Supreme Court decision as to whether parole or probation officers are entitled to absolute immunity, the circuit courts are split on the issue. See Anton v. Getty, 78 F.3d 393, 396 (8th Cir. 1996) (holding that probation officers are entitled to absolute immunity) with Wilson, 878 F.2d at 775-776 (holding that probation officers are not entitled to absolute immunity when they perform executive and administrative functions). This court is, of course, bound by Wilson.

<sup>10</sup> Our Court of Appeals, and several of the district courts within the Eastern District, have held that no absolute immunity attaches when a parole officer (1) investigates allegations of parole violations and crimes, Wilson, 878 F.2d at 776; (2) types and signs warrants for the arrests of parole violators, id.; (3) assists police initiating investigations of crimes committed by parolees, id.; (4) provides false information that a parolee violated the terms of parole or committed a crime, Harper, 808 F.2d at 283-284; (5) performs the general responsibilities of a parole or probation officer, id.; (6) presents information to a parole board about a parole violation, Thompson, 556 F.2d at 238-239; (7) conducts a warrantless search of a parolee's residence without probable cause, Shea v. Smith, 966 F.2d 127-130, 131 (3d Cir. 1992); (8) carries out a mandatory statutory duty such as verifying information in a parolee's record, Jones, 402 F. Supp at 998; or (9) gathers information to prepare a presentence report, see Biers v. Nicola, 839 F. Supp. 332, 335 (E.D. Pa.

was performing the executive duties of his position as a probation officer, and, as such, he is not entitled to absolute immunity.

#### **E. Qualified Immunity**

In the alternative, Knorr asserts that he is entitled to qualified immunity from plaintiff's claim. Government officials, performing discretionary functions, are entitled to qualified immunity for their actions, if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity is an affirmative defense that the officer must raise. See Siegert v. Gilley, 500 U.S. 226, 231 (1991). Because the Supreme Court characterizes the issue of qualified immunity as a question of law, Elder v. Holloway, 510 U.S. 510, 511 (1994),<sup>11</sup> the Court has

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1993).

Conversely, the Third Circuit holds that a parole board member or parole or probation officer is entitled to absolute immunity when he engages in certain adjudicatory acts such as: (1) hears evidence; (2) makes recommendations as to whether to parole a prisoner; or (3) makes decisions as to whether to grant, revoke or deny parole. Wilson, 878 F.2d at 776; Harper, 808 F.2d at 284.

<sup>11</sup> Despite the Court's statement that qualified immunity questions are questions of law, the Third Circuit has noted that there is sometimes significant doubt as to the pure legal character of such questions. The Third Circuit has noted that the Court's imperative to decide qualified immunity issues early is in tension with the reality that factual disputes often need to be resolved before determining whether the defendant's conduct violated a clearly established constitutional right. Curley v. Klem, 298 F.3d 271, 278 (3d Cir. 2002). The Third Circuit has indicated that resolution of this question may be a fact-intensive inquiry that requires a careful examination of the record. Grant v. City of Pittsburgh, 98 F.3d 116, 122 (3d Cir. 1996). Such an examination should include a detailed factual description of the actions of each individual defendant. Id.

The lack of a sufficient record upon which to decide the qualified immunity issue is of particular concern in a motion to dismiss context. In Kulwicki v. Dawson, 969 F.2d 1454 (3d Cir. 1992), the Third Circuit noted that the standard of review for a 12(b)(6) motion favors denying qualified immunity. Id. at 1462. "On review of a motion to dismiss for failure to state a claim, we look only to the complaint to see whether there is any set of facts plaintiff can prove that would support denial of immunity." Kulwicki, 969 F.2d at 1462.

repeatedly encouraged the resolution of immunity questions early in the proceedings. Saucier v. Katz, 533 U.S. 194, 200-201 (2001); Hunter v. Bryant, 502 U.S. 224, 227 (1991) (per curiam); 483 U.S. 635, 646 n6 (1987).

Whether or not Knorr is entitled to qualified immunity from plaintiff's Section 1983 action for damages will depend on whether he is able to show that his conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. This requires a two part analysis. First, taken in the light most favorable to the party asserting the injury, do the facts alleged show that the defendant violated a constitutional right. Second, if the initial prong is satisfied, the court must determine whether that right was clearly established at the time of the alleged violation. Saucier, 533 U.S. at 201-202; Curley v. Klem, 298 F.3d 271, 279-280 (3d Cir. 2002); Grant v. City of Pittsburgh, 98 F.3d 116, 121 (3d Cir. 1996) (citing Anderson v. Creighton, 483 U.S. 635, 636-637 (1987)).

The court, however, is unable to make either determination on the face of this complaint. While plaintiff appears to allege that Knorr violated his Fourth Amendment rights by conducting an illegal seizure and two illegal searches, he does not expressly say so in his complaint. As such, the court cannot apply the test for qualified immunity. It cannot determine what federal rights, if any, Knorr allegedly violated or what specific factual allegations support the specific right. Nor can it determine whether those unidentified federal rights were clearly established at the time of the alleged violation as to those facts. Moreover, neither party has briefed these issues in the context of specific facts and a specific federal right. Because any assessment of qualified immunity is thus premature at this time, the court denies Knorr's motion to dismiss on this ground and grants plaintiff leave to amend his complaint to identify the federal rights upon which he is basing his Section 1983 claim and the factual allegations supporting each such claim.

## **II. Plaintiff's Section 1985 Claim (Count II)**

Section 1985 prohibits conspiracies between private and government actors to deprive an individual of his constitutional rights. Count II of plaintiff's complaint alleges that Knorr and certain other defendants engaged in a conspiracy, in violation of the *second* clause of Section 1985(2).<sup>12</sup> Specifically, plaintiff asserts that Knorr and certain other defendants engaged in a conspiracy to prevent him from testifying at the NLRB proceeding by filing false charges and using false testimony against him. The court, however, finds that the second clause of Section 1985(2) is

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<sup>12</sup> Plaintiff does not specify, in his complaint, which of the three sub-sections of Section 1985 he alleges to have been violated by the defendants. Based on his reply brief to the motion to dismiss by defendants Local 115, Smith and Keyser, however, it appears that his claim is for a violation of the second clause of Section 1985(2). Pl.'s Memo. in Opp. to the Mot. to Dis. of Defs.' Local 115, Smith and Keyser 8.

Courts generally subdivide Section 1985(2) into two separate clauses, "that which precedes and that which follows the semi-colon." Brawer v. Horowitz, 535 F.2d 830, 840 (3d Cir. 1976) (agreeing with First Circuit that Section 1985(2) subdivides into two clauses). The first clause prevents interference with the administration of justice in federal courts. The second clause prevents interference with the administration of justice in state courts. In full, Section 1985(2) reads:

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

42 U.S.C. § 1985(2).

inapplicable to the instant case for three reasons.

First, the statute's plain language and purpose precludes its application in the instant case. The second clause of Section 1985(2) makes it unlawful for "two or more persons [to] conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any *State* . . . with intent to deny to any citizen the equal protection of the laws." 42 U.S.C. § 1985(2) (emphasis added). The second clause aims at proscribing conspiracies that interfere with the administration of justice in state courts. Kush v. Rutledge, 460 U.S. 719, 724-725 (1983); Brawer v. Horowitz, 535 F.2d 830, 840 (3d Cir. 1976). To maintain a claim under the second clause, a plaintiff must first point to some state proceeding. Plaintiff, however, makes no allegation of interference with any *state* court proceedings. Rather, he alleges that defendants prevented him from attending a meeting with a *federal* administrative agency, the NLRB. As the second clause only prohibits interference with state court proceedings, the lack of such a proceeding vitiates plaintiff's claim.

Second, plaintiff's claim under the second clause of Section 1985(2) will be dismissed because he fails to allege "class-based, invidiously discriminatory animus." Although the Supreme Court has yet to decide the issue,<sup>13</sup> our Court of Appeals requires a showing of racial or class-based

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<sup>13</sup> Although the Court has not expressly addressed the issue, it has offered guidance in its other decisions. In Griffin v. Breckenridge, the Court held that Section 1985(3) required a showing of racial animus due to the equal protection language in that provision. 403 U.S. 88, 102. The Court examined the text of Section 1985(3) and stated:

The language requiring intent to deprive of *equal* protection, or *equal* privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all.

animus to maintain a claim under the second clause of Section 1985(2). See Brawer, 535 F.2d at 840 (holding that because the complaint did not allege a class-based, invidiously discriminatory animus, the complaint failed to state a claim under the second clause of Section 1985(2)); see also Davis v. Township of Hillsdale, 190 F.3d 167, 171 (3d Cir. 1999) (affirming the requirement that plaintiff must prove racial or other class-based invidiously discriminatory animus to prevail under the second clause of Section 1985(2)). Because plaintiff makes no allegation of racial or class based discrimination in his complaint, his claim under the second clause of Section 1985(2) will be dismissed.<sup>14</sup>

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Id. In Kush, the Court reaffirmed its holding that Section 1985(3) requires a showing of racial, or class-based, invidiously discriminatory animus. Kush, 460 U.S. at 724-26.

The second clause of Section 1985(2) contains equal protection language identical to the language of Section 1985(3). As such, many courts have found that the second clause of Section 1985(2) also requires such a showing. For example, in Daigle v. Gulf State Utilities Co., Local Union Number 2286, et al., 794 F.2d 974, (5th Cir. 1986), the Fifth Circuit held:

Like § 1985(3), the second part of § 1985(2) is directed at conspiracies to deprive equal protection; the equal protection language in § 1985(2) is paralleled in § 1985(3). Thus, we have held that the Griffin race or class-based animus requirement of § 1985(3) also applies to claims under the second part of § 1985(2).

Id. at 979; see also Harrison v. Springdale Water & Sewer Commission, 780 F.2d 1422, 1429 (8th Cir. 1986) (same reasoning); L.R. Bretz v. Kelman, 773 F.2d 1026, 1029-1030 (9th Cir. 1985) (same reasoning); Williams v. St. Joseph Hospital, 629 F.2d 448, 451 (7th Cir. 1980) (same reasoning); Dacey v. Dorsey, 568 F.2d 275, 277 (2d Cir.), cert. denied, 436 U.S. 906 (1978) (same reasoning); Hahn v. Sargent, 523 F.2d 461, 469 (1st Cir. 1975) (same reasoning).

<sup>14</sup> Even if plaintiff argues that defendants discriminated against him based on his class as a protesting union member, the court will have to dismiss his complaint because the equal protection provisions of the statute do not protect against bias based on economic views or activities. In United Brotherhood of Carpenters and Joiners of American, Local 610, AFL-CIO v. Scott, 463 U.S. 825, 839 (1983), the Court held that it would not “construe 1985(3) to reach conspiracies motivated by economic or commercial animus.” Because the second clause of Section 1985(2) contains equal protection language parallel to that contained in Section 1985(3), I will apply the Court’s rule to also prohibit application of the second clause of Section 1985(2) to claims based on economic animus.

Third, plaintiff's claim will be dismissed because interference with an administrative proceeding is not redressible under either the first or second clause of Section 1985(2). See Deubert v. Gulf Federal Savings Bank, et al., 820 F.2d 754, 758 (5th Cir. 1987) (“[I]nterference or obstruction of administrative proceedings is not redressible under section 1985(2).”); Daigle v. Gulf State Utilities Co., 794 F.2d 974, 979-980 (5th Cir. 1986) (holding that appellant's allegations of interference with a NLRB proceeding do not fall within the confines of Section 1985(2)). Thus, even if plaintiff had alleged a claim under the first clause of Section 1985(2), proscribing interference with federal court proceedings, his claim would still fail because an administrative NLRB proceeding is not covered under that clause.<sup>15</sup>

Based on any of the above grounds plaintiff's Section 1985 claim will be dismissed as to defendant Knorr.

## CONCLUSION

For the reasons set forth above, plaintiff's claim under Section 1983 will be dismissed as inadequately plead. His claim under the second clause of Section 1985(2) will be dismissed because it does not involve a state court proceeding, because it does not allege racial or class-based animus and because interference with an administrative proceeding is not redressible under that

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<sup>15</sup> Plaintiff urges the court to follow the Third Circuit's advice not to adopt a “crabbed and unwarranted reading” of the statute. Malley-Duff & Assoc., Inc. v. Crown Life Insurance Co., 792 F.2d 341, 355 (3d Cir. 1986). In that case, concerning the ability of a plaintiff to bring a Section 1985(2) claim based on delays, expenses, inconvenience and the suppression of evidence during the pretrial phase, the Third Circuit held that Section 1985(2) applied to discovery and pretrial phases as well as interference with the trial. The case did not involve administrative proceedings. It lends no insight as to what our Court of Appeals would do if confronted with the issue here, namely, whether Section 1985(2) applies to administrative proceedings. As such, the court finds persuasive the reasoning of the Fifth Circuit on this issue.

section. In light of the above, Count I of plaintiff's complaint will be dismissed without prejudice and with leave to amend and Count II will be dismissed as to all named defendants, including Knorr.<sup>16</sup> An appropriate order follows.

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<sup>16</sup> In Count II of his complaint, plaintiff also names the following as defendants: Norton Brainard, Gerald McNamara, James E. Smith, Edward F. Keyser, Charles Argeros, Sean Heim, Paul Vanderwoude and Leo Reilly. Based on the reasoning set forth above, plaintiff's Section 1985 is also dismissed as to these defendants.

